

make a title to the said Samuel James. Your committee are of opinion that this is a case clearly within the provisions of existing laws, by which the court has power to order the administrator of Joseph Price, to execute a title to the said Samuel James, upon proper proof being made of the formal execution of the written agreement between the parties. Your committee therefore offer the following resolution.

Resolved, That the committee be discharged from any further consideration of the subject.

No. 231.

Report of the commissioners of the western state penitentiary.

.....
READ, February 10, 1830.
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To the Senate and House of Representatives of the Commonwealth of Pennsylvania.

GENTLEMEN,

We have the honour to transmit to you the annexed report, containing the information relative to the convicts confined in the western penitentiary of Pennsylvania, required by the 1st article of the eighth section of the act of the 23d of April, 1829. And in further obedience to the directions of that law, we beg leave to submit for your consideration, the following observations, the result of our very short experience, upon the condition of this prison, and the system of solitary confinement now pursued in Pennsylvania.

The plan and construction of the penitentiary buildings under our superintendence, is so essentially connected with this subject, that it seems proper to call your attention immediately to it.

The fund of \$3000, appropriated by the 11th section of the late act, to the western penitentiary, to be appropriated by the inspectors in making "such alteration of the interior of said penitentiary, as in their opinion will best adapt the same to the provisions of this act," came to the hands of the board at so late a period, that it was not deemed advisable to expend it during the last quarter of the late year. Great difficulty, in its application, so as to meet the intention of the law, presents itself to the minds of the board; indeed, it is doubted whether it be possible, by any reasonable expenditure, on the present plan of the building, to accomplish anything more than solitary confinement. This matter will be better understood by a reference to the plan, which it is presumed will be found among the archives of the legislature. There is perhaps, no trade or occupation, at which a convict could work in any of the cells. Independent of the want of room in a kind of vault,

about 7 by 9 feet in the clear, there is not sufficient light; the only supply being what can reach the culprit, after passing through the narrow gratings of a heavy iron door, hung on stone jambs 3 feet thick, after passing through an out door, and across a vestibule 6 feet deep. Constant confinement in these cells, is found incompatible with the health of the convicts, and we have found it necessary to permit two or three to be out alternately, which gives an opportunity of intercourse to about 20 in each section, that greatly diminishes the benefit of solitary confinement.

It is proposed to remedy this evil, in the application of the fund so far as it will extend, by enclosing a yard or court in front of each cell, about 12 or 15 feet deep, with a high brick wall, in which the convict can have air and exercise. This improvement, necessary to the principle of solitary confinement, will make an alteration in the present mode of heating the cells, necessary; which will be attended with great difficulty in preserving a uniform temperature. They are now heated by stoves placed at suitable distances in the piazza or passage in front, a door opening on each side of the vestibule in front of each cell, in order to transmit the heat along the line, making it practicable for the tenant of each cell to speak to two or three on each side. These doors will have to be built up, and the heat if possible, transmitted in pipes. The most effectual plan, and perhaps ultimately the most economical, would be by the introduction of steam conveyed in pipes, as it is in our cotton factories. The board have taken some pains to ascertain the expense of this mode; and find the apparatus for generating and transmitting heat through the whole establishment, would cost about \$10,000. Two of the towers, which appear to the board to be useless for any other purpose, might be occupied as places for generating the steam. The propriety of appropriating \$5000, the sum necessary for heating half the number of cells in this way, is respectfully submitted to the legislature. Something of this kind would appear indispensable, in order to carry fully into effect the principle of solitary confinement; a principle of such high importance in the estimation of the board, that it lies at the basis of all their hopes of advantage to be derived from the penitentiary system. How far it may be possible, when the contemplated improvements are effected, to connect labour with solitary confinement, will have to be tried. To make it practically useful in defraying the expenses of the institution, appears to us a hopeless concern.

In the attempt to combine and effect the two objects, (labour and solitary confinement), an obstacle at once presents itself, and probably, an insurmountable one; arising from the circumstances, that but few of the convicts have been taught trades, and only a small portion of these are of that kind that can be followed in a small cell in solitary occupation. The question then occurs, how are you to teach and give trades to the greater portion, without associating them with those who can instruct, and thus breaking in upon and destroying the principle of solitary confinement?

It seems to us that a cell so constructed as to afford the proper personal security of the convict, and to give full effect to the punishment of solitary confinement, must be totally unfit for the purpose of labour, and the occupation of a tradesman or any mechanical business. Hence it is, that in giving employment even to the shoemakers (a trade more easily pursued singly than any other), we have been obliged to take them from their cells, and put them to work together in a large room in one of the towers.

Some alterations in the front building, so as to make it afford accommodation for more than one family, are deemed necessary by the board. This huge mass of hewn stone, 120 feet long, and from 30 to 40 deep, and four stories high, including the basement, has room enough in it for at least four families; and yet, such is its construction, that it allows but an uncomfortable accommodation to the warden's family; obliging the keepers and other officers of the institution, to live in the towers adjoining, within the penitentiary, which is found very disadvantageous to the discipline of the institution. About \$2000 would make the only practicable alterations, which it is hoped will be authorised.

The inconvenience and difficulties arising out of the construction of this building, are to be ascribed to the circumstance, that by the 3d section of the act of the 3d of March, 1818, the commissioners were directed "to construct the penitentiary upon the plan exhibited to the legislature by the inspectors of the prison of the city and county of Philadelphia." This plan was filed in the office of the Secretary of the Commonwealth, and furnished to the board here, for their guidance; and so strictly were they confined to it, that it was found necessary to apply to the legislature and obtain an express law, authorising any, even the slightest variation from it. Apparently, it is a plan, not for the combination of labour and separate confinement, as contemplated by the present law, but was formed with a view to the principle of solitary confinement only: and such are its defects, that this single object is very imperfectly obtained. It was unfortunate that the building was first put up, and the system of punishment afterwards prescribed. In such case, it could not be reasonably expected that the plan would be well adapted to the present combined principle.

The provisions of the late act, prohibiting the indiscriminate intercourse of visitors, from curiosity and worse motives, are found very salutary, and it is hoped they will not be withdrawn.

To provide for the moral and religious instruction of the convicts, without allowing any compensation, has been found difficult. It is submitted whether a small sum might not be wisely assigned to this object, to be applied at the discretion of the board.

Although every thing may be done within the power of the inspectors and keepers, by books, instruction, caution and advice, to produce a change for the better upon the minds of the convicts, yet we do not feel authorised to say, with an experience of only six months, that ignominious confinement and labour will obtain

the great and benevolent object of the law, and become "the means of reformation, so that when restored to their liberty, they may prove honest, industrious and useful citizens."

It will always be consistent with that spirit of philanthropy which distinguishes the legislators of Pennsylvania, to keep in view and employ all the practicable means for the reform of public offenders; and every good citizen would be happy to witness the success of such laudable efforts—yet we cannot but believe and recommend, that certainty in the punishment is, above all others, the primary object in forming a criminal code, and the one most likely to be the salutary means of deterring others from the commission of crime. You may, possibly, in very rare instances, produce reform, by making upon the mind of the convict moral and religious impressions; but let the rule of punishment, the sentence of condemnation be certain and inflexible, and you will deter and thereby save a much greater number from becoming offenders. Vigilance in our officers, together with the strength of the building, will render the punishment certain and severe, without injuring the health of the convict; and there is nothing which can prevent the wholesome benefits resulting from the example and from the terror to others, but the exercise of the constitutional and executive power of pardon. Clemency, whilst it is an acknowledged virtue in the breast of the individual, is frequently yielded to by the public officer in cases in which it would be much better for the general good that it should be suppressed, and the law permitted to take its course. It is wise and necessary that the power of pardon should be constitutionally vested in the chief magistrate of the state, and cases may occur, but we humbly think they are very rare, in which it should be exercised. In Pennsylvania, such is the benign administration of the law, that we have never known an innocent man to suffer as a public culprit, but we have known many guilty to escape.

The frequent exercise of the power of pardon destroys the certainty as well as the just severity of punishment. We observe in almost every case, that the bars of the cell are scarcely closed upon the culprit, when he begins to talk of a pardon, and his friends and associates out of doors commence the work of importuning (and frequently of deceiving) the Governor, and appealing to all the fine feelings of his nature for a remission of the punishment. The prospect of his forgiveness bears up the prisoner, keeps alive his hopes and his spirits so as to lighten the sentence, and scarcely permit him to feel the intended weight of his punishment.

With these impressions upon this subject, in order to avoid the frequent importunities of the associates and acquaintances of convicts, and the appearance of voluntary interference in their behalf, the board of inspectors deemed it necessary to adopt the rule that they will make no representation and give no certificate of the conduct of a prisoner, unless specially required by the Governor.

These observations are made in a spirit of very great respect for that high officer of the government in whose hands the power of pardon is very properly placed. They cannot be intended as made for the purpose of confident dictation or obtrusive complaint, but are merely given as the result of our experience and observation as inspectors of this prison, and appear to be called for by the act under which this communication is made.

Our experience and intercourse with the prisoners, authorise us in saying, that rigid separate imprisonment, cutting off all communication, even with the human voice, and not to be relaxed upon any occasion, is one of the severest punishments short of death, that can be inflicted on a public offender. It tames, humbles and breaks down the spirit of the most hardened and desperate felon. And if any thing can be relied on to bring him over to a proper course of reflection, to repentance and reform, it is this unbending and austere solitary confinement. All the convicts here admit its distress and severity, and ask for labour. Solitary labour is an alleviation of their punishment.

On the other hand, from the same sources of information, we are led to believe that the association of the prisoners in common yards or large rooms, however severe and laborious their employment may be, renders the punishment light and of little consideration with them, and certainly, if it does not completely destroy, removes to a great distance every prospect of moral reformation. If these impressions be correct, it places before our legislature this difficult and doubtful choice—to give up the hope of reform, and employ the convicts in a community of hard labour, and thereby lessen the expenses of public punishment—or, to increase these expenses by adhering to the hope of reform in prosecuting the system of solitary confinement, with a poor prospect of efficiently combining it with productive labour.

By a reference to the annexed tabular report, it will be seen that the whole number of convicts upon this day, in confinement in the Western Penitentiary is fifty nine—that the number has more than doubled within the year—that the one half describe themselves as natives of Pennsylvania—and of the whole number, seven are females, sixteen negroes, and seven are known to be old offenders, having been the tenants of other penitentiaries, and no doubt there are others of the same character, if the truth could be discovered.

It would be highly satisfactory, and probably attended with beneficial effects, if a plan could be adopted to facilitate the means of ascertaining whether a convict, when brought to the prison, is an old offender or not. This object might be obtained by an interchange of reports amongst the several penitentiaries of the Union, descriptive of the convicts and giving any other information tending to identify their persons. This interchange, it is presumed, could not be enforced by any legislative act, but would depend upon the courtesy of the officers of the several institutions, which might be encouraged by a law requiring it to be performed on our part, and authorising the payment of the expenses attend-

ing the prosecution of the plan. The accompanying table also shows that but very few of the prisoners are convicted for crimes of great atrocity. The ordinary and prevailing felony of our country appears to be that of larceny, for by the document now laid before you, out of the fifty nine cases, forty six of them are for the commission of that offence, and a great majority of these cases are convictions for pilfering articles of inconsiderable value.

In order to spread before you all the information in our power, in relation to the condition and expenses of the institution under our inspection, we deem it our duty further to say to you, that the officers of the prison, consist of a warden, at a salary of \$600 one overseer, at a salary of \$400, one watchman, at a salary of \$365, a clerk, at a salary of \$200, who also performs the duty of religious instructor, and one physician, at a salary of \$300; making the aggregate amount of salaries the sum of \$1,865.

The western district consists of twenty-four counties, eleven of which have no convicts in the penitentiary. The accounts which have fallen under our inspection for the six months, ending on this day, against the remaining thirteen counties, for "the expenses of maintaining and keeping" their several convicts, amount to the sum of \$2,012 37, of which the county of Allegheny alone pays \$986 01, very nearly the one half of the whole amount.

And for the purpose of covering some trifling and incidental expenses, which are hardly worth enumerating; the board found it necessary to charge a very small advance upon the actual cost of purchase of each of the items, thus avoiding the occurrence of a deficiency, for the payment of which, there is no provision in the law.

The attention of the legislature is very respectfully called to the mode prescribed in the ninth section of the law, for the payment to be made by each county, of the expenses of maintaining and keeping its convicts. This repayment of expenses by the several counties of the district, constitutes the fund, and only means by which the institution is to be maintained, and the system carried on. The counties can only be called upon annually, on the first Monday of May, to pay the orders drawn by the inspectors, founded upon the accounts transmitted upon the preceding first Monday in February. Of course, the penitentiary must always be in advance for one entire year, in the maintenance of the convicts for the whole district.

Our present means of support, until after the first Monday in May next, depend upon the collection of balances due upon the 1st of July last, when the new system went into operation—some of these balances are withheld, and payment refused. Notwithstanding these circumstances, as we are now going on, and if we continue to go on very smoothly, this system may answer the purpose, now and then only causing the inconvenience of having a balance against us, upon the books of our treasurer, but in case of any unforeseen occurrence, or special emergency, the institution might be involved in difficulties and embarrassment, much to be

regretted, and injurious to the public interest. It might very readily be rendered unable to provide for its wants and the support of its inmates, by a sudden and considerable increase of convicts; or by a portion of the counties disputing their accounts, and refusing to make payment, a case which sometimes happens; and it also occurs, that with the best disposition on the part of the county officers to make payment, our warrants are frequently drawn upon, and presented at empty treasuries.

Should it prove practicable, too, upon further experience, to employ the convicts at hard labour, there is no fund provided by law for the purchase of tools, machinery, and the materials of manufacture.

If these suggestions should be found to be correct, two inquiries might, with apparent propriety be made.

1st. Would it not be expedient to pass a law, giving a summary remedy, for the recovery of debts due to the penitentiary, by the several counties, for the maintenance of their convicts—making the accounts rendered, when attested by the warden and clerk, and sworn to by the inspectors, *prima facie* evidence of their correctness?

2d. Would it be safe, in case of any particular emergency, to authorise the inspectors, upon receiving the approbation and warrant of the governor, to draw upon the state treasury, for such sum as might be deemed necessary, not exceeding a limited amount?

Recurring to a fact mentioned in a foregoing part of this report, showing how unequally the expenses of sustaining this establishment, fall upon the counties of the state, connected with many considerations of a public nature, an important question, and one which engages the attention of many of our citizens, very fairly presents itself. Ought not the penitentiaries to be maintained from the treasury of the state, and not by the counties according to the number of their several convicts? To throw the expenses upon the state at large, would be equalizing the burden, and making it fall much lighter, if felt at all, upon our citizens. Those crimes for which the guilty are condemned to suffer imprisonment and hard labour in the penitentiary, are public and general in their nature, there is nothing local, or peculiarly affecting, or injurious to that particular county, in which they happen to be committed. The offence consists in a violation of the general laws of the commonwealth and ought not therefore the expense of the punishment of the offender, be borne by the community, complaining of the injury. This inquiry may be elucidated, and the inequality and burden some nature of the present system, may be seen by turning to the case of the county of Allegheny. This county you may say, bears one half the expenses of supporting the western penitentiary. To be sure, it is much more populous than any other county in the district. But it is not to this circumstance, nor to the character of its population, that the fact to which we call your attention, is to be attributed. It is owing, in a great measure, to the accidental geographical position of this county upon the map of the state,

situated upon, and at the confluence of two great rivers, being upon the very thorough-fare and great highway, from the east to the west and south west,—many wandering and emigrating vagabonds, are brought within its limits, and there commit their depredations. Why, it may be asked, should the mere accidental circumstance of the commission of a crime within the limits, or just across the line of a county, by the inhabitant of another district, or of another country, impose upon that county all the costs and expenses of the punishment of the guilty stranger?

In making this report to the gentlemen of the Senate and House of Representatives, we trust we have been governed by the spirit of the law of the last session. If we have passed beyond the provisions of that act, and submitted observations not therein required of us, we hope the error will be ascribed to an anxious wish to give what little information we possess upon a system which is now the subject of public investigation, and is deeply interesting to the commonwealth.

We have the honour to be

With great respect,

Your obedient servants,

JOHN M'DONALD,

WM. WILKINS,

JOSEPH PATTERSON,

WM. ROBINSON, Jun.,

JOHN IRWIN.

Western Penitentiary,
January 1, 1830.

No. 232.

Report of the committee on corporations, relative to incorporating the trustees of the congregation of Claysville, the members of the Methodist Episcopal church of Bethany and Honesdale, the Methodist congregations of Mount Pleasant and Dundaff, the petition of the Presbyterian church at Dundaff.

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READ, February 10, 1830.
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Mr. Wilkins, from the committee on corporations, to whom was referred the petitions of 1. Trustees of the congregation of Claysville. 2. The members of the Methodist Episcopal church of Bethany and Honesdale. 3. The Methodist congregations of Mount Pleasant and Dundaff. 4. The petition of the Presbyterian church at Dundaff, made the following report, which was read, viz: